

REMARKS

Applicants respectfully request reconsideration and withdrawal of the outstanding Office Action rejections based on the foregoing amendments and following remarks. Claims 1, 4, 15, 16, 34, and 35 have been amended and claims 2-3, 7-13, and 21-33 have been canceled. New claims 36-38 have been added. No new matter has been added.

Response to Rejections under 35 U.S.C. §102

Claims 21, 25, and 26 were rejected under 35 U.S.C. 102(b) as being anticipated by Hacker et al. (U.S. 2001/0031704).

Claims 21, 25, and 26 were rejected under 35 U.S.C. 102(b) as being anticipated by Pellerin et al. (Herbicide Mixtures in Water-seeded Imidazolinone-Resistant Rice, 2003).

In the interest of advancing prosecution and without acceding to the proprieties of the allegations in the Office Action, Applicants submit that claims 21, 25, and 26 have been canceled thereby rendering the above rejections moot.

Response to Rejections under 35 U.S.C. §103

Claims 1-6, 13-20, 34, and 35 were rejected under 35 U.S.C. 103(a) as being obvious over Hacker in view of Bratz et al. (U.S. 2003/0148887). The Examiner acknowledges that Hacker does not disclose treating coniferous plants, but asserts that

Bratz discloses herbicidal mixtures which may comprise imazapyr and/or carfentrazone for treating crops including the *Pinus* species. Applicants respectfully disagree.

Hacker is directed to controlling harmful rice plants consisting of tolerant or resistant mutants or transgenic rice plants that are resistant to herbicides. There is no mention of treating coniferous plants, the *Pinus* species, or the pinaceae family of plants. In Bratz, imazapyr and carfentrazone are included in a very large list of herbicidal active ingredients

Apart from the fact that coniferous plants are in no way related to the weeds against which carfentrazone and imazethapyr have been shown to be active by Pellerin or Hacker, it must be noted that coniferous plants do not grow in rice plantations. The Examiner's allegations based on the combination of Hacker and Bratz are a misunderstanding of the disclosure of Bratz. Bratz discloses that "[T]he control of undesired vegetation is understood as meaning the destruction of weeds. Weeds, in the broadest sense, are understood as meaning all those plants which grow in locations where they are undesired." (see paragraph [0118]). Further, Bratz discloses that the formulations according to the invention can be employed in a further number of crop plants for eliminating undesired plants. Suitable crops are, for example, *Pinus spec.* (see paragraphs [0121-0122]). Thus, the goal of Bratz is to eliminate undesired plants, i.e. weeds, from amidst crop plants. *Pinus spec.* is listed as one of a large list of crop plants in which the herbicidal formulations of Bratz can be used to eliminate these weeds. The application of herbicides in crops only makes sense if the crops are unaffected and the undesired plants are eliminated. Thus, a person of ordinary skill in

the art reading Bratz would have expected to eliminate weeds while leaving the listed crop species largely unaffected.

Indeed, the present invention is based on the surprising finding that coniferous plants can be controlled (i.e. killed) by applying an effective amount of sulfentrazone or carfentrazone or a suitable salt or derivative thereof to the coniferous plants to be controlled. This unexpected result has been evidenced by the data presented in Table 1 on page 15 of the specification. From these data it can be seen that the combination of carfentrazone and imazapyr provides effective control of the coniferous plants.

In the attached declaration, Dr. Zawierucha explains that "Bratz et al. do not give the slightest hint that carfentrazone or sulfentrazone might be active against *Pinus spec.* Rather, a skilled person would have expected from the teaching of Bratz et al. that the mentioned herbicide compounds do not affect *Pinus spec.*" From the data summarized in Table 1 on page 4 of the declaration, it can be seen that both carfentrazone and sulfentrazone (in combination with imazapyr) provide effective control of coniferous plants. The data of experiment 3, summarized in Table 3 on page 7 of the declaration demonstrates the unexpected result that carfentrazone alone provides control of coniferous plants and that imazapyr enhances this control. This finding was rather surprising because other PPO inhibitors such as flumioxazine and pyraflufen are less effective than carfentrazone or sulfentrazone as can be seen from the data presented in Tables 1, 2, and 2a of the declaration. This finding could not have been expected from the cited art. Rather, the cited art does not motivate one of ordinary skill in the art to control coniferous plants as presently claimed.

In view of the above, Applicants submit that the present claims are not anticipated or rendered obvious by the cited art. Applicants respectfully request that the rejections be withdrawn and the claims be allowed.

New Claims

New claims 36-38 have been added to define further embodiments of the invention. Claim 36 is supported by page 6, lines 18-21 of the specification and claims 2 and 9 as originally filed. Claims 37 and 38 are supported by claims 14 and 18 as originally filed, respectively.

Conclusions

In view of the above amendments and remarks hereto, Applicants believe that all of the Examiner's rejections set forth in the December 31, 2008 Office Action have been fully overcome and that the present claims fully satisfy the patent statutes. Applicants, therefore, believe that the application is in condition for allowance.

The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

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Enclosure: Declaration of Dr. Zawierucha